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character, even with his own consent, to such dangers, unless with instructions or cautions sufficient to enable him to comprehend them, and to do his work safely. It was, therefore, competent for the plaintiff to show that there had been such a breach of duty on the part of the defendants, and although he had in fact gone to work in the place pointed out, assenting so to do, yet that he was incapable of appreciating the dangers to which he exposed himself, or of doing the work safely without instructions or cautions which he did not receive." See also *O'Connor v. Adams*, 120 Mass. 427; *Parkhurst v. Johnson*, 50 Mich. 70; s. c. 45 Am. Rep. 28; *Reardon v. New York, &c., Co.*, 51 N. Y. Sup. Ct. R. 134; *Costello v. Judson*, 21 Hun (N. Y.) 396; *McGinnis v. Canada Southern Bridge Co.*, 49 Mich. 466; *Hill v. Gust*, 55 Ind. 45.

In *Swoboda v. Ward*, 40 Mich. 420, it was held that the mere fact that the employee knew of the exposed and dangerous position of certain machinery did not necessarily preclude a recovery. The court say: "Even if he (the employee) had known of the cogs and their unguarded condition, it would not thereby conclusively follow that he could not recover. Other facts and circumstances would have to be considered in connection therewith; his age, his intelligence, his experience and such like, so that the jury might ascertain and determine whether he fully understood and appreciated

the danger." See *Howard Oil Co. v. Farmer*, 56 Tex. 301.

In *Fones v. Phillips*, 39 Ark. 17, it was held that an instruction, "where a child is employed at or about dangerous machinery, it is the duty of the employer to see that he is of sufficient age and intelligence to understand the nature of the risks to which he is exposed. And it is the further duty of the employer to explain to him the risks reasonable to be apprehended, in such a manner as to enable a person of his youth and capacity, to intelligently appreciate the nature of the danger ordinarily attending its performance, and a failure to do this would be a want of ordinary care in the employer. And it is for the jury under all the circumstances of the case at bar, to say whether the defendants have discharged their duty in that behalf, and if not they were guilty of negligence. And in determining this question, the jury should, together with the other facts proven, take into consideration the age, capacity, intelligence and character of the injured party," was a correct statement of the abstract law, although improper in that particular case, as the evidence clearly showed that the plaintiff, who was a minor, had been fully instructed as to the dangers of the machine by which he was injured, and was of sufficient intelligence to comprehend the nature of the risks of his employment.

LOUIS M. GREELEY.

Chicago, Ill.

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### *Court of Errors and Appeals of Delaware.*

**WILLIAM H. SWIFT, PRESIDENT OF THE DIAMOND MATCH COMPANY, v. THE STATE OF DELAWARE, EX REL. DAVID M. RICHARDSON.**

A foreign corporation transacting business in a state, submits itself to the law of that state, and its resident officers, may be compelled by mandamus, to allow a stockholder to inspect and take copies of corporate books and papers in the possession of such officers.

Such a writ may be granted at the suit of a stockholder, who is neither a resident

of the state where the corporation was incorporated, nor of the state where the writ is asked for, and when the inspection is asked for in aid of a suit, in a foreign state, between a stockholder and a third person, to which suit the corporation is not a party.

R., a resident of Michigan, filed a petition in a Delaware court, against S., president of the D. Company, S. being a resident of Delaware, and the D. Company being a corporation of the state of Connecticut, doing business in Delaware. The petition asked for a mandamus to compel S. to allow R., who was a stockholder of the D. Company, to inspect and make copies of certain books and papers of the D. Company, in the possession of S., and which R. desired for use in a suit in the state of Michigan, between R. and a third person: *Held*, that the court had jurisdiction; that the corporation was not a necessary party, and that as R., as a stockholder, had a right to inspect the corporate papers material to his suit, in the possession of S., the mandamus should be granted.

### ERROR to New Castle County.

Mandamus. At the May Term, A. D. 1884, of the Superior Court of the state of Delaware, in and for New Castle county, David M. Richardson presented his petition to the court for a writ of mandamus against William H. Swift, President of the Diamond Match Company, of which Richardson was a stockholder, to compel inspection and liberty to take copies of certain books and papers of the company in the custody of Swift, in the city of Wilmington, in the state of Delaware, the inspection having been allowed, but copies denied.

The relator claimed the inspection and copies for use in a suit pending in the state of Michigan, of which he was a resident, the history and character of which suit is as follows: Mr. Richardson, a large stockholder of the Diamond Match Company, in 1879 and 1880 entered into contracts with Christian H. Buhl and Russell A. Alger, of Detroit, by which Russell and Alger were to become surety for Richardson to the United States on his bond for match stamps, and also to endorse certain notes of Richardson, who thereupon transferred a large block of stock of the Diamond Match Company to Russell and Alger, as collateral security, and they were to receive a proportion of the net earnings of the stock pledged, and not merely of the dividends declared on the stock. It was agreed that on such settlement no loss that may be charged on account of the purchase and sale by the company of other match factories should be taken into account, and that the earnings were to be estimated from the trial balances or books of the company, and allowance was to be made for loss or shrinkage in value of the company, and consideration taken of the improvements made out of the earnings.

In September 1883, Messrs. Buhl and Alger advertised the stock at public sale, claiming that although their liability on the bond had ceased, and all the notes which they had endorsed for Richardson had been paid by him, yet that there was still due them about \$60,000, for net earnings of the Diamond Match Company during 1881 and 1882. Mr. Richardson denied this liability, and filed a bill in equity in the Superior Court of Detroit for an injunction to restrain the sale, and for an accounting of the amount due Russell and Alger under the contract. The case in Michigan is at issue and ready for proofs to be taken.

It is for use as evidence in this suit that Mr. Richardson desires to have copies of certain books and papers, the right to take the copies having been refused by Mr. Swift by order of the board of directors of the company.

The petition of the relator alleges that he is a resident of Michigan, and that the Diamond Match Company is a corporation organized under the laws of the state of Connecticut; that the suit in Michigan relates wholly to, and involves the necessity of ascertaining what were, the true net earnings during the years 1881 and 1882, and what deductions from the earnings were proper to be made on account of loss and shrinkage of the property of said company, and what sums should be charged for improvements and expenditures necessary to be made in order to enable said company to make such earnings or profits; and that it is necessary for him to have access for this purpose to certain books, &c., and to certain instruments of purchase and sale during those years, and to certain bonds, contracts and agreements not to engage in the business of making matches entered into and paid during those years.

That said instruments, &c., are not now kept in Connecticut, but are now in the custody and control of the respondent in the city of Wilmington, the place of residence of Swift.

The relator further avers, that he wishes the inspection not from any idle curiosity or for any improper purpose, but solely because the books, &c., furnish the best evidence and in many cases the only evidence of the facts shown thereby; that said facts are material and necessary in his suit, and that he cannot safely proceed to a hearing without such evidence; and the petition concludes with a prayer for liberty to inspect and make copies of certain specific instruments, &c., relating to the business of the company during the years 1881 and 1882.

On filing the petition the usual rule to show cause issued, and the respondent filed a motion to quash the said rule for the reasons that the company was a corporation organized under the laws of Connecticut, and as such not subject to the jurisdiction of the court; and for the further reason that the rule was issued against the respondent by the designation of the president, and not against him as a public officer recognised by the laws of this state as charged with any public duty by the laws of this state.

Subsequently the respondent was directed to answer the rule, and an agreement was made in open court that the motion to quash should be heard at the time of the hearing of said rule, as if no answer had been filed; and if upon the hearing of the said motion and rule the court should be of opinion that a writ of mandamus should be granted, that a peremptory writ and not an alternative writ should be issued.

The material parts of the answer are stated in the opinion of Chancellor SAULSBURY.

The case was argued at the November Term of the Superior Court by *William C. Spruance*, of Wilmington, and *George V. N. Lothrop* and *William M. Lillibridge*, of Detroit, for the relator, and *George Gray* and *Benj. Niels*, of Wilmington, for the respondent.

At the February Term the rule was made absolute, and it was ordered by the court (COMEGYS, C. J., and HOUSTON, J., concurring, and WOOTEN, J., dissenting), that a peremptory writ of mandamus issue against the respondent as prayed for.

A writ of error was taken on this judgment to the Court of Errors and Appeals, consisting of Chancellor SAULSBURY, and HOUSTON and GRUBB, JJ., and argued at the June Term 1886 by

*Gray* and *Niels*, for the plaintiff in error, and  
*Spruance* and *Lillibridge*, for the defendant in error.

The opinion of the court was delivered by

SAULSBURY, Chancellor.—The case comes before us upon a writ of error to a judgment of the Superior Court of this state, in and for New Castle county, in favor of David M. Richardson against William H. Swift, President of the Diamond Match Company.

Richardson was the holder and owner of shares of stock in the Diamond Match Company, a corporation under the laws of Connecticut. Swift was a director and president of said company and resides in this state.

As a stockholder in said company, Richardson applied to Swift for permission to inspect and take copies of certain papers and documents in his possession, for a purpose which he alleged was necessary and proper and material to his interest as a stockholder in said company. Inspection was not refused, but permission to make copies or memoranda of said papers and documents was refused. Thereupon Richardson presented his petition to the court below, praying said court to award a writ of mandamus against Swift, commanding him to suffer and permit said Richardson to inspect and make copies of the instruments, books, papers and writings in his custody or control belonging to the said Diamond Match Company, to wit: 1. All contracts and agreements for the purchase by or on behalf of the said Diamond Match Company of match factories and other property relating to the same prior to January 1st 1881. 2. All instruments in writing conveying or assigning to said company or other persons in its behalf property, rights or franchises relating to the manufacture of matches prior to said last-mentioned day. 3. All contracts, agreements or conveyances relating to said purchase of property by or on behalf of said company, other than for materials or supplies in the usual course of its business prior to said last-mentioned day. 4. All bonds, contracts and agreements not to engage in the match business made to or with said company prior to said last-mentioned day. 5. All books, papers and writings of said company, showing the net earnings of the company for and during the years 1881 and 1882.

To Richardson's petition Swift filed an answer, in which he does not deny that the papers and documents mentioned in Richardson's petition and sworn to be in his possession, were in his possession at the time of the service of the writ, or were then in his possession, but states, "that the law of the said state of Connecticut under which said corporation was created and exists provides, that 'the statements and books of every such corporation shall be kept in the town where it is located, and shall at all reasonable times be open to the inspection of its stockholders, and as often as once in each year, a true statement of the accounts shall be made and exhibited to the stockholders.' And the said law further provides, 'that the president and treasurer of every joint stock corporation shall annually, on or before the 15th day of February or August, lodge with the town clerk of the town in which said corporation is located, a certificate signed and sworn to by him, showing

the condition of its affairs as nearly as the same can be ascertained on the 1st day of December or January, or on the 1st day of June or July next preceding the time of making such certificate in the following particulars, to wit: 1. The amount of the capital stock actually paid in; 2. The cash value of its real estate; 3. The cash value of its personal estate, exclusive of patents; 4. The amount of its debts; 5. The amount of its credits; 6. The name, residence and number of shares of each stockholder."

The defendant Swift also in his answer says: "That in conformity to the provisions of the said law as aforesaid, the statement and books of the said corporation have been and are now kept in the town of New Haven, where it is located as aforesaid, and have been at all times, and are now, open to the inspection of any of the stockholders, and that in the month of February in each year since the organization of said corporation, the certificates required by said law as aforesaid, signed and sworn to by the president and treasurer of the said corporation, have been duly lodged with the town clerk of said town of New Haven, and duplicates thereof, made and sworn to as required by said law, have been lodged by them as aforesaid with the secretary of the said state of Connecticut; and that in all respects the requirements of the said law as set forth in the relator's exhibit 'B' have been fully and faithfully complied with by the said corporation and its officers, and that the said statements and books were not, at the time of the filing of said petition, or at any time since, in the custody or possession of the said William H. Swift."

Now it will be observed that the relator's exhibit "B" in respect to which Swift in his answer says that the requirements of the law have been fully and faithfully complied with by the said corporation and its officers, relates only to, 1. The amount of the capital stock actually paid in; 2. The cash value of its real estate; 3. The cash value of its personal property exclusive of patents; 4. The amount of its debts; 5. The amount of its credits; 6. The name, residence and number of shares of such stockholders. And it was in reference to these that Swift says, 'that the said statements and books were not at the time of the filing of the said petition, or at any time since, in the custody or possession of the said William H. Swift.'"

He nowhere makes a similar declaration in respect to the documents and papers, an inspection of which, and the privilege of

making copies of which, was demanded of him by the relator, and the privilege of taking copies of which was refused by him. This will appear manifest from the answer of Swift to the petition filed in the court below. He therein says that, "this respondent is without authority from said corporation to permit, and is expressly prohibited by said corporation from permitting the said relator to make copies of its books, papers or instruments of writing, which may be in his custody or control as president of said corporation, for the purposes mentioned in said petition, unless required so to do by the laws of the state of Connecticut, under which the said corporation exists."

He further says, "that to allow copies of all the instruments, bonds, contracts, agreements, books, papers or writings belonging to the said corporation, and mentioned in said relator's petition, to be made by the relator for use and publication in his said suit, would greatly impede, hinder and obstruct the conduct of the business of the said corporation, and injure and greatly damage the interests of the same, and of its other stockholders."

From this also it appears that the papers and documents mentioned in the relator's petition as in the possession of the said Swift, and the privilege of taking copies of which was demanded by him, and refused by the said Swift at the city of Wilmington, where they were in said Swift's possession, were not the same as those required to be kept in New Haven by the act of the state of Connecticut under which the Diamond Match Company was organized, and were not the same statements and books as those mentioned in the relator's exhibit "B," which Swift in his answer says were not at the time of the filing of the said petition, or at any time since in the custody or possession of the said William H. Swift.

When Swift says, "that the said relator has been furnished with statements showing fully and accurately what were the net earnings of the said corporation during the years 1881 and 1882, and has been permitted by the said corporation full and free access to all books, accounts, bonds and paper mentioned in his petition, and to inspect the same personally, or by his attorney," he nowhere denies that demand was made upon him by the relator for permission to make copies of the books, accounts, bonds and papers, and that such demand was refused by him.

The right to make copies and to make abstracts and memoranda of documents, books and papers by a stockholder in an incorporated

company, is as full and complete as the right of inspection thereof. David M. Richardson, the relator, a resident of the state of Michigan, was and is a stockholder of the Diamond Match Company, a corporation created under the laws of the state of Connecticut. William H. Swift, a resident of the city of Wilmington, in the state of Delaware, was and is a stockholder in the said corporation, and president thereof.

There was and is no law of the state of Connecticut, requiring that the president of said corporation should be a resident of the state of Connecticut.

There was and is no law of said state, requiring that the papers and documents mentioned in the relator's petition should be kept in New Haven, or in the state of Connecticut. They were in fact kept in the city of Wilmington, in the state of Delaware, and in the possession of William H. Swift, at the time of the demand and refusal of the privilege of copying the same, and are there yet in the same possession so far as we know from anything in this case.

The grounds upon which the awarding the mandamus was resisted in the court below, and upon which the reversal of the judgment below is asked in this court, are sufficiently stated in the answer of Swift, and are as follows: "And the said William H. Swift further says that the said David M. Richardson and the said Christian H. Buhl and Russell A. Alger are all residents of the state of Michigan, and the controversy and suit pending between them, as appears from the said relator's petition and exhibits filed, arises upon a contract entered into between them in the said state of Michigan, and which was made with respect to the laws of the said state; and the said controversy and suit do not arise upon any contract or engagement entered into in the state of Delaware, or with respect to the laws thereof.

That the said controversy or suit is not with or against the said corporation, or for the purpose of establishing or maintaining any right of the said relator as a member of the said corporation; or compelling the exercise or performance by any officer thereof of any corporate function or duty.

And that the suit or controversy does not arise out of or upon any contract or engagement by or on behalf of said corporation, or out of or by reason of any duty imposed by law upon said corporation, and that the said corporation is not a party to said suit or

interested therein, and can in no wise be affected by its determination.

That this respondent is without authority from said corporation for permitting said relator to make copies of any of its books, papers or instruments of writing, which may be in his custody or control as president of said corporation, for the purposes mentioned in said petition, unless required so to do by the laws of the state of Connecticut under which the said corporation exists. That to allow copies of all the instruments, bonds, contracts, agreements, books, papers or writings belonging to the said corporation, and mentioned in said relator's petition, to be made by the relator for use and publication in his said suit, would greatly impede, hinder and obstruct the conduct of the business of the said corporation, and injure and greatly damage the interests of the same and of its other stockholders.

A mandamus may be defined to be a command issuing from the Superior Court, directed to some person, corporation or inferior court, within the jurisdiction of the superior court, requiring them to do some particular thing therein specified which by law they are bound to do, and which a superior court has previously determined, or at least supposes, to be consonant to right and justice.

It is unnecessary for the purposes of this case to trace the origin and history of the writ of mandamus. While it is true that in England it was originally what is called a "prerogative writ," and is there generally treated as such, in this state, and in this country, it is simply a writ divested of all its prerogative features, for the enforcement of a remedy by a person having a legal right against another person withholding that right. Prerogative writs, as such, may be said to have no existence in this state, or in this country.

The writ of mandamus, and the right to it in all cases to which it is applicable, is as clearly recognised in our jurisprudence as any other writ which may be issued out of the courts of law to which a party may be entitled.

A clear recognition of this as settled law will go far to divest the character of the writ of much seeming mystery or obscurity of meaning with which it has been customary to surround it, and will greatly simplify the issue involved in this cause, which is nothing more nor less in its nature or character than a suit at law between one person as plaintiff and another as defendant.

Thus considered, the only questions for us to decide in this case

are, has David M. Richardson, the plaintiff, shown a clear right against William H. Swift to be permitted by him to inspect and take copies of the papers in the petition mentioned? Has he made demand and been refused the privilege of so doing by said Swift? Has he any other remedy, or is the writ of mandamus his only specific remedy for the enforcement of a clear right which has been denied him? Has he no other adequate or specific legal remedy to compel the inspection, and the right to take copies of the papers and documents mentioned in his petition? Has the relator shown a clear legal right to the particular thing which he has demanded? Has the right been refused by William H. Swift? Did Swift act wrongfully and illegally in refusing the relator's right, and is there no other way in which the relator can legally enforce his right, except by the writ of mandamus?

These are the questions, and the only questions which are necessary to be decided by us.

The writ of mandamus only issues where there is a clear and specific legal right to be enforced, or a duty which ought to be, and can be performed, and where there is no other specific and adequate legal remedy. The right which it is sought to protect must, therefore, be clearly established, and the writ is never granted in doubtful cases. The exercise of the jurisdiction to grant it rests, to a considerable extent, in the sound discretion of the court, subject always to the well-settled principles which have been established by the courts.

The test to be applied in determining the right to relief by mandamus, is to inquire whether the party aggrieved has a clear legal right, and whether he has any other adequate remedy, since the writ only belongs to those who have legal rights to enforce and find themselves without an appropriate legal remedy. "In such case," says High, "the right to the extraordinary aid of a mandamus may be regarded to that extent as *ex debito justitiæ*." The relator must show not only that he has a clear legal right to have the particular thing in question done, but also the right to have it done by the person against whom the writ is sought.

A corporation may have a mandamus to compel the custos of corporate documents to allow him an inspection, and copies of them, at proper times and on proper occasions, he showing clearly a right on his part to such inspection and copies, and refusal on the part of the custos to allow it: *Angel and Ames on Corp.* 775, and notes

of authorities cited; High on Injunctions. Indeed, upon this point the authorities are uniform, and I shall not burden this opinion with the citation and examination of the numerous authorities which have established it as settled law.

Swift never in his answer objects that the corporation, The Diamond Match Company, is not a party to the proceeding. He nowhere denies that he is the *custos* of the papers, documents, &c., an inspection and copies of which has been demanded of him, and been refused by him. If he was such *custos*, it was not necessary, in my opinion, that the corporation should have been a party to the proceedings. Had the corporation been created by the laws of this state it would not have been a necessary party to these proceedings. "Indeed," says Angel and Ames on Corp. 775, "it (*mandamus*) lies to any person who happens to have the books of the corporation in his possession and refuses to deliver them up." And High, sect. 31, says, which is more pertinent to the point under consideration, "as regards the person to whom the writ should be directed, where an inspection of corporate records is sought, the proper practice is to address it to the one actually having the custody of the books and records, even though it is merely a ministerial officer acting under the direction of others, as in the case of a bank cashier acting under a board of directors. In such case the rule applies that the writ should run to the particular person who is to perform the act required, and the cashier having charge of the books, his refusal to allow the inspection is his individual act, and the writ is therefore properly addressed to him, though there can be no impropriety in such case in directing the writ also to the board of directors."

If the writ should be addressed to the one actually having the books and records, even though he is merely a ministerial officer acting under the direction of others, as a cashier of a bank acting under the board of directors (12 Wend. 183), it would seem that the corporation was not only not a necessary party, but should not be a party according to such practice, although the addition of the corporation or including it in the rule would not vitiate the proceedings, and the reason is this, that while the *custos* would be the party to whom the writ should be addressed, he having the books, papers, &c., in his possession, there would be no impropriety in allowing the corporation, whose agent the *custos* was, to answer the rule, and show cause, if they could, why their agent should not be

compelled by the writ of mandamus to allow the inspection and copies of the same. Taking this, therefore, to be the proper practice in cases where the custos is in possession of the documents and papers an inspection and copies of which are demanded, and in cases where the corporation is a domestic one, can there be any reason why the rule should be different where the corporation is a foreign one, the custos being domiciled in this state, and having possession of the books, papers and documents by authority of the foreign corporation? I can see none. Swift in his answer says, "that the said Diamond Match Company is a corporation created by and existing under the laws of the state of Connecticut, and is not a corporation created by or existing under any law of the state of Delaware, and that the same is located in the town of New Haven, in the state of Connecticut, though it does hold real and personal property in the state of Delaware, and transacts business incidental to its business within the state of Connecticut."

Now if it holds real and personal property in the state of Delaware and transacts business incidental to its business within the state of Connecticut, it holds such property and transacts such business by the comity of the state. Its president lives here and is the custos in fact of the documents and papers, an inspection of which, and the privilege of taking copies of which, the relator seeks. The corporation itself does business here, not as a corporation created by the state of Delaware, but as a foreign corporation created by the law of Connecticut.

What results from this? That acting here as a foreign corporation, and holding real and personal property, and doing business as such within this state, it submits or subjects itself to the law of the state in the same manner and to the same extent, in respect to such property and business, as it would be bound to do were it a corporation created by the state of Delaware, and owes obedience and subjection to the mandates of its courts in these respects as fully as if it were a domestic corporation.

Was William H. Swift the legal custos as well as the custos in fact of the documents and papers, an inspection and copies of which the relator seeks? No act of the legislature of Connecticut, and no by-law or rule of the corporation has been produced showing that provision was therein made for the custody of said books and papers. Nothing has been shown us which requires said documents and papers to be kept within the state of

Connecticut. They have not been shown to have been in the possession of any other person than William H. Swift. William H. Swift has for many years resided, and still resides, in the city of Wilmington, in the state of Delaware. He has, and ever has had, the actual possession and control of the same as far as their history has been made known to us. His possession of them is not to be presumed unlawful, but is I think presumed to be lawful.

Service of the rule was made upon him and an answer to it was made by him. He signs himself to said answer as William H. Swift, President of the Diamond Match Company. Now suppose Mr. Richardson, the relator, instead of being a citizen and an inhabitant of the state of Michigan, was a citizen and inhabitant of the state of Delaware, and a stockholder in the Diamond Match Company, could any one reasonably doubt that the courts of Delaware would be competent to afford him the relief he asks by granting him the State's writ of mandamus? Does the fact that he is a citizen and inhabitant of the state of Michigan affect his rights in this respect? I think not. Has he not the same rights as a stockholder in the company to the inspection and copies of the books, papers and documents in the possession of Swift, who must be presumed to be the agent of the directors of the company in respect to such books, papers and documents, and the custody thereof, and who is in fact the president of the company, as he would have were he a citizen and an inhabitant of the state of Delaware? Has he not the same rights in respect thereto in the courts of Delaware as the citizen and inhabitant of Delaware would have? Sect. 2, Art. 4, of the constitution provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." Among the rights secured, is the right to sue in the courts of any state. This is settled by judicial decisions beyond legal controversy.

It does not matter for the purpose of this case where the said David M. Richardson and Christian H. Buhl and Russell A. Alger reside, nor how the controversy and suit pending between them arises. The question is, has the relator shown a clear right to inspect and take copies of the books, papers and documents mentioned in his petition? It is not material who are the parties to the suit in Michigan, mentioned in the respondent's answer, nor out of what it arises.

The question is, what are the rights of Richardson, the relator,

as against Swift, the respondent, in respect to the papers and documents, of which Swift is the legal custos? It is not in the power of the corporation to prohibit their president and agent from obeying the mandate of the court below. Courts of law are not prohibited from exercising their rightful jurisdiction by such feeble authority, nor will they heed such impotent obstructions. If they have jurisdiction, in all proper cases they will proceed to judgment and execute their judgments in the manner the law provides.

But the respondent says, "that to allow copies of all the instruments, bonds, contracts, agreements, books, papers or writings belonging to said corporation, and mentioned in said relator's petition, to be made by the relator for use and publication in his said suit would greatly impede, hinder and obstruct the conduct of the business of the said corporation, and injure and greatly damage the interests of the same and of its other stockholders." Why awarding the writ of mandamus in this particular case should be attended by such consequences to the corporation is not readily to be perceived. If their transactions have been fair and just in all respects to the members of the corporation and others, it is presumed that such transactions will bear the light of inspection and criticism, without impeding, hindering or obstructing the conduct of the business of the corporation, or injuring it in any respect whatever; but the right of Richardson to the relief he seeks depends not upon the consequences that may result to the corporation, but to the satisfaction of the court that he is entitled to the inspection and copies of the papers mentioned in his petition.

It does not follow that though the court below had the right, and it was their duty to award the writ of mandamus against Swift under the circumstances of this case, that the power of the superior court in respect to a foreign corporation is unlimited, and may be exercised in respect to all matters in which foreign corporations are concerned. The superior court, and even the state of Delaware itself, cannot forfeit the charter of a foreign corporation. They cannot compel the election of a stockholder, nor prevent the removal of one. They cannot, in general, intermeddle with or control the internal concerns of a foreign corporation. Their jurisdiction in respect to such corporations is extremely limited, but they have power to see that the officers, agents and servants of such corporations transacting business in this state by the comity of the state, shall yield obedience to the laws of the state.

I have not made reference to the fact that there is an Act of the Assembly of this state conferring the right on the Diamond Match Company, a corporation of the state of Connecticut, to hold real and personal property, and to transact its business within this state, for although the act is mentioned in the brief of the respondent's attorneys, and referred to in the argument, it is nowhere stated in the record sent up to us from the court below.

The ownership of the property and the transaction of the business of a foreign corporation is admitted by the respondent in his answer. The obligations arising from state comity are the same as those that would arise from such an act of the General Assembly, and would be so regarded by the courts of law.

For the reasons which I have stated I think that the judgment of the court below should be affirmed with costs.

HOUSTON, J., concurred in the opinion of the Chancellor, and GRUBB, J., dissented.

Judgment affirmed.

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## ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF ILLINOIS.<sup>1</sup>

SUPREME JUDICIAL COURT OF MAINE.<sup>2</sup>

SUPREME COURT OF MISSOURI.<sup>3</sup>

COURT OF CHANCERY OF NEW JERSEY.<sup>4</sup>

SUPREME COURT OF RHODE ISLAND.<sup>5</sup>

ACTION. See *Mortgage*.

AGENT. See *Usury*.

ATTACHMENT. See *Insurance*.

BANKRUPTCY.

*Property of Bankrupt not recovered by Assignee.*—The fact that an assignee in bankruptcy has not recovered the property assigned or realized its money value, within the time limited by the bankrupt law, does not give the bankrupt or his creditors a right to recover the property : *Mount v. Manhattan Co.*, 41 N. J. Eq.

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<sup>1</sup> From Hon. N. L. Freeman, Reporter ; to appear in 115 Ill. Rep.

<sup>2</sup> From J. W. Spaulding, Esq., Reporter ; to appear in 78 Me. Rep.

<sup>3</sup> From T. K. Skinker, Esq. The cases will probably appear in 85 or 86 Mo. Rep.

<sup>4</sup> From Hon. John H. Stewart, Reporter ; to appear in 41 N. J. Eq. Reports.

<sup>5</sup> From Arnold Green, Esq., Reporter ; appear in 15 R. I. Reports.